145.

SUPREME COURT OF THE UNITED STATES.

No. 100.

LEDYARD, HATTER & CO., PLAINTIFFS IN ERROR,

vs.

BROWN, BROTHERS & CO.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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J. & G. S. GIDEON, printers.

Pleas had before the honorable the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama, at a term thereof, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, before his honor John McKinley, presiding judge, and his honor William Crawford, judge of said court:

Be it remembered, that heretofore, to wit, on the ninth day of March, in the year of our Lord one thousand eight hundred and forty-two, William Brown, James Brown, Stewart Brown, Sam'l Nicholson, and William E. Brown, partners under the firm of Brown, Brothers & Co., sued out of said court their writ of capias ad respondendum, against Wm. J. Ledyard, Wm. P. Hatter, and L. N. Hitchcock, partners under the firm of Ledyard, Hatter & Co., in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States, for the ninth judicial circuit and southern district of Alabama.

BROWN, BROTHERS & Co.
vs.
LEDYARD, HATTER & Co.

The President of the United States to the marshall of said district, greeting:

You are hereby commanded to take the bodies of Wm. J. Ledyard, Wm. P. Hatter, and L. N. Hitchcock, partners under the firm of Ledyard, Hatter & Co., of Mobile, who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of March instant, to answer unto William Brown, James Brown, Stewart Brown, Samuel Nicholson, and William E. Brown, partners under the firm of Brown, Brothers & Co., of the city of New York, and State of New York, and citizens thereof, in a plea of trespass on the case, to the damage of the plaintiffs five thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [SEAL.] this fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one.

Issued the ninth day of March, in the year of our Lord one thousand eight hundred and forty-two.

Attest: DAVID FILES,
Clerk C. C. southern district of Alabama.

8,269. NEW YORK, *Oct'r* 16, 1840.

Exchange for $2,500 $\frac{00}{100}$.—Four months after date of this my first and only bill of this tenor and date, pay to the order of Messrs. Ledyard,

Hatter & Co., twenty-five hundred dollars, value received, and place the same to account of your obt. serv't.

Signed, T. SANFORD.

To Messrs. J. & C. B. SANFORD,
Merchants, Mobile, Ala., 19*th Feb'y*, 1841.

[Endorsed.] J. & C. B. SANFORD.

(Endorsed.)—Pay Brown, Brothers & Co., or order.
Signed, LEDYARD, HATTER & Co.

This action is brought upon the bill of exchange, of which the above is substantially a copy.

We accept service of the within writ, waiving copy, and consent that the same may be placed on the trial docket, November term, 1842.

LEDYARD, HATTER & Co.
GIBBONS & FISHER, *for pltffs.*

MOBILE, *March 9th*, 1842.

And afterwards, to wit, at a term of the circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-two, the plaintiffs filed the following declaration, to wit:

(Declaration.)

UNITED STATES OF AMERICA,
Southern district of Alabama, circuit court, spring term, 1842:

William Brown, James Brown, Stewart Brown, Samuel Nicholson, and William E. Brown, co-partners under the name and style of Brown, Brothers and Company, who are citizens of the State of New York, by attorney, complain of Wm. J. Ledyard, William P. Hatter and Lenman N. Hitchcock, co-partners under the name, firm, and style of Ledyard, Hatter and Company, who are citizens of the State of Alabama, in custody, &c., of a plea of trespass on the case. For that, whereas, one Thaddeus Sanford, heretofore, to wit, on the sixteenth day of October, 1840, at New York, to wit, in the district aforesaid, made his certain bill of exchange, bearing date the day and year aforesaid, and then, and there, and thereby requested Messrs. James Sanford and Charles B. Sanford, partners under the firm of J. & C. B. Sanford, four months after the date thereof, to pay to the order of the said defendants twenty-five hundred dollars, and then directed the same to Messrs. J. & C. B. Sanford, for value received, and then and there delivered the said bill of exchange to the said defendants; and the said defendants afterwards, and before the payment of the said sum of money, to wit, on the day and year aforesaid, at the district aforesaid, endorsed and delivered the said bill of exchange to the said plaintiffs.

And the said plaintiffs aver, that afterwards, when the said bill of exchange became due and payable, according to the tenor and effect of the same, to wit, on the 19th day of Feb'y, 1841, the said bill was presented

and shown to the said J. & C. B. Sanford, and payment then and there demanded, according to the tenor and effect of the said bill, but neither the said J. & C. B. Sanford, nor the said defendants, nor any one on his or their behalf, did or would pay the same, and the said bill of exchange was then and there protested for non payment; of all of which, the said defendants afterwards, to wit, on the day and year last aforesaid, had notice. By means whereof, and by force of the statute in such cases made and provided, the defendants became liable to pay to the said plaintiffs the said sum in the said bill of exchange specified, according to the tenor and effect thereof; and being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said bill of exchange specified; yet the said defendants, though often requested, have not paid the said plaintiffs the said sum of money in the said bill of exchange specified, or any part thereof, but the same to pay, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiffs of five thousand dollars; wherefore they sue.

GIBBONS & FISHER,
Plaintiffs' attorneys.

And afterwards, to wit, at a term of the circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama, begun and held, in and for said district, at Mobile, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two, before his honor William Crawford, judge of said court, the following proceedings were had, to wit:

BROWN, BROTHERS & Co.,
vs.
LEDYARD, HATTER & Co.

Acceptance of service proved by George Cleaveland, junr.

This day came the plaintiffs, by their attorneys, and the defendants being solemnly called, came not, but wholly made default, whereby the said plaintiffs therein against them remain altogether undefended; it is therefore considered by the court, on motion, that the said William Brown, James Brown, Stewart Brown, Sam'l Nicholson, and William E. Brown, plaintiffs, do recover against the said Wm. J. Ledyard, Wm. P. Hatter, and L. N. Hitchcock, defendants, the sum of twenty-eight hundred and seventy-five dollars, their damages as assessed by the clerk of this court, together with their costs.

And afterwards, to wit, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and forty-three, the following writ of fieri facias was issued from the office of the clerk of the court aforesaid, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama.

The President of the United States to the marshal of any district in the State of Alabama, greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements, of Wm. J. Ledyard, Wm. P. Hatter, and L. N. Hitchcock, late in said district, you cause to be made the sum of thirty-one hundred and twenty-five dollars, with interest thereon from the 31st day of December, A. D. 1842, which Wm. Brown, James Brown, Stewart Brown, Wm. E. Brown, and Sam'l Nicholson, at a term of said circuit court, begun and held on the fourth Monday of November, 1842, have recovered against them for damages; also the sum of twenty-seven dollars, which to the said William et al., in the same court, were adjudged for costs and charges in that behalf expended, whereof the said Wm. J., etc., are convicted, as appears of record; and that you have the said sums of money before the said circuit court, on the second Monday of March next, at the place of holding said court at Mobile, to render to the said William et al., of the damages and costs aforesaid; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-two.

Issued the 19th day of January, 1843.

Attest:

DAVID FILES,
Clerk C. C. So. Dist. Ala.

On payment of the sum of $3,125 by T. Sanford or J. &. C. B. Sanford, collect only costs.

D. FILES, *Clerk.*

Received 19th January, 1843, stayed by supersedeas.

WM. ARMISTEAD,
United States marshal.
By C. CUYLER, *D. M.*

Whereupon, afterwards, to wit, on the ninth day of February, in the year of our Lord one thousand eight hundred and forty-three, the following petition, with the order annexed, was filed in the office of the clerk of said court, to wit:

STATE OF ALABAMA, *Mobile county:*

To the honorable Wm. Crawford, one of the judges of the circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama.

The petition of Thaddeus Sanford, of said county, respectfully represents unto your honor, that on the 16th of October, 1840, he drew a certain bill of exchange on J. & C. B. Sanford, of Mobile, in favor of

Ledyard, Hatter & Co., due 4 months after date, for the sum of twenty-five hundred dollars, payable in Mobile; that said bill was accepted by the said J. & C. B. Sanford, and endorsed by Ledyard, Hatter & Co., to Brown, Brothers & Co., of New York. That at the spring term of the circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama, held in Mobile, suit was commenced in favor of Brown, Brothers & Co., against all of the parties to the said bill, and at the last December term of said court, judgment was rendered on said bill of exchange, in favor of the plaintiffs, against all the parties thereto, for the sum of twenty-eight hundred and seventy-five dollars.

Your petitioner further represents unto your honor, that executions have been issued on said judgment, in favor of the plaintiffs, for the sum of thirty-one hundred and twenty-five dollars, and are now in the hands of the marshal, and he is about to proceed to collect and enforce the same. Your petitioner states, that the executions are proceeding illegally, and have not been issued in conformity with the said judgments, and as their payment is demanded in specie, their enforcement will oppress your petitioner, and the said J. & C. B. Sanford, who accepted the said bill of exchange, and the said Ledyard, Hatter & Co., who endorsed the same, for the sole use, benefit, and accommodation of your petition. Your petitioner further states, that he is advised and believes, that he could have defeated the said judgments, but having heard that judge McKinley would not be at court at the last November term, we supposed the case would stand continued until the spring term, and did not employ counsel to represent him and his securities in the case, and was not informed of the rendition of the judgments in said cases until after the adjournment of the court.

Your petitioner prays your honor to grant a supersedeas in the said several cases, until the next term of the circuit court, to be held in said circuit, and that then justice may be done in the premises.

And your petitioner will ever pray, &c.

THADDEUS SANFORD.

Fifth judicial circuit, and southern district of Alabama.

Personally appeared before me, the undersigned judge of the United States, for circuit and district aforesaid, the above named Thaddeus Sanford, who being duly sworn, saith, that the facts set forth in the foregoing petition are true, so far as stated of his own knowledge, and that the others he believes to be true.

WM. CRAWFORD.

February 8*th*, 1843.

The clerk of the circuit court of the United States, for the fifth judicial circuit of the United States, and southern district of Alabama, will issue a supersedeas to the executions which have issued on the said judgments, upon the petitioners' giving bond and security, as provided by the statute of the State of Alabama in such case.

WILLIAM CRAWFORD, *Judge.*

February 8*th*, 1843.

And afterwards, to wit, on the ninth day of February, the following bond was filed in the office of the clerk of said court, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama.

Know all men by these presents, that we, T. Sanford, Wm. J. Ledyard, James Sanford, and S. F. Wilson, are held and firmly bound unto Wm. Brown, James Brown, Stewart Brown, Sam'l Nicholson, and Wm. E. Brown, who are citizens of the State of New York, in the just and full sum of six thousand two hundred and fifty dollars, for the payment of which, well and truly to be made, to the said Wm. Brown et als., their certain attorneys, heirs, executors, administrators, or assigns, we, and each of us, bind ourselves, and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents. Sealed with our seals, and dated this ninth day of February, in the year of our Lord one thousand eight hundred and forty-three.

The condition of the above obligation is such, that whereas the above named William Brown, James Brown, Stewart Brown, Sam'l Nicholson, and Wm. E. Brown, have obtained heretofore a judgment in the court aforesaid, for the sum of twenty-eight hundred and twenty-five dollars, besides costs of suit, against Wm. J. Ledyard, Thaddeus Sanford, James Sanford, Charles B. Sanford, Wm. P. Hatter, and L. N. Hitchcock. And whereas, the said Thaddeus Sanford has filed his bill in said court, praying that said suit may be enjoined. And whereas, his honor Wm. Crawford has ordered the said injunction may issue upon the said complainant's entering into bond, with sufficient security, etc. Now, therefore, if the said T. Sanford, William J. Ledyard, James Sanford, and S. F. Wilson, shall well and truly abide by and perform such decree or judgment as the said circuit court shall or may at any time pronounce in the premises, then this obligation to be void, otherwise to be and remain in full force and effect.

T. SANFORD, [SEAL.]
WM. J. LEDYARD, [SEAL.]
JAMES SANFORD, [SEAL.]
S. F. WILSON, [SEAL.]

Signed, sealed, and delivered in presence of—

DAVID FILES, *Clerk.*

Circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama.

Personally appeared before me, the undersigned clerk of the court aforesaid, S. F. Wilson, who being duly sworn, deposes and says, that after paying all his just debts and liabilities, he is worth the amount of the penalty of the within bond.

S. F. WILSON.

Sworn to and subscribed, before me, this ninth day of February, A. D. 1843.

DAVID FILES, *Clerk.*

And thereupon, afterwards, to wit, on the ninth day of February, in the year of our Lord one thousand eight hundred and forty-three, the following supersedeas was issued from the office of the clerk of the court aforesaid, to wit:

Circuit court of the United States, fifth circuit and southern district of Alabama.

The President of the United States to the marshall of said district, greeting:

Whereas, heretofore, to wit, at a term of the court aforesaid, held at Mobile, on the fourth Monday of November, 1842, Brown, Brothers & Co., of the State of New York, upon a certain bill of exchange, drawn by T. Sanford on J. & C. B. Sanford, in favor of Ledyard, Hatter & Co., and by them endorsed, dated 16th Oct'r, 1840, payable 4 months after date, for the sum of twenty-five hundred dollars, recovered judgments against the said drawer, endorsers, and acceptors, for the sum of principal, interest, and charges of protest; and whereas executions have issued for the same, and ten per cent. damages, as against the drawer and endorsers, and for all costs, upon which the plaintiffs, by their counsel, have endorsed an order to collect specie. And whereas, the said drawer has filed his petition before one of the judges of the court aforesaid, praying that the aforesaid executions may be superseded for the causes therein set forth; and whereas, the honorable William Crawford, judge as aforesaid, has ordered that a supersedeas issue to the executions, which have issued against the said Thaddeus Sanford, drawer, Ledyard, Hatter & Co., endorsers, and J. & C. B. Sanford, acceptors, on the aforesaid several judgments, upon the said parties giving bond, etc. And whereas, also, the said parties have entered into bond, with S. F. Wilson their security, as directed. Now, therefore, you are hereby commanded to cease all further proceedings in levying and collecting the several amounts specified in the aforesaid executions; and you are hereby further commanded to make known to the said Wm. Brown, James Brown, Stewart Brown, Sam'l Nicholson, and Wm. E. Brown, and their agents and attorneys, that they, each, all, and every of them, do cease and desist from any further proceedings in levying or collecting the aforesaid judgments in favor of said Brown, Brothers & Co., against the said drawer, endorsers, and acceptors, to wit, one judgment in favor of said Brown, Brothers & Co., against T. Sanford, for $3,125; one other judgment in favor of Brown, Brothers & Co., against Ledyard, Hatter & Co., for $3,125; and one other judgment in favor of the said Brown, Brothers & Co., vs. J. & C. B. Sanford, for $2,875. And what you do in the premises, make known to the court aforesaid, at Mobile, on the second Monday in March next; and have you then and there this supersedeas.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourth Monday of November, 1842.

Issued 9th February, 1843.

Attest:

DAVID FILES,
C. C. C. So. Dist. Alabama.

And afterwards, to wit, at a term of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of March, in the year of our Lord one thousand eight hundred and forty-three, before his honor John McKinley, presiding judge, and his honor William Crawford, judge of said court, the following proceedings were had, to wit:

This day came the plaintiffs, by their attorneys, and it appearing that in assessing said plaintiffs' damages, the clerk of this court omitted to include the sum of two hundred and fifty dollars, being ten per cent. damages on the bill of exchange sued upon, and moves the court now here, that the judgment, by default, rendered in this cause, at the November term, last past, of this court, be now corrected and entered up as of said term—which motion is granted.

And now, this day, that is to say, on the 31st day of December, A. D. 1842, came the said plaintiffs, by their attorneys, and the said defendants being solemnly called, came not, but wholly made default, whereby the said plaintiffs therein against them, remain altogether undefended. It is therefore considered by the court, on motion, that the said William Brown, James Brown, Stewart Brown, Samuel Nicholson, and William E. Brown, plaintiffs, do recover against the said William J. Ledyard, William P. Hatter, and L. N. Hitchcock, defendants, the sum of thirty-one hundred and twenty-six dollars and twenty-five cents, their damages as assessed by the clerk of this court, together with their costs.

And afterwards, to wit, at the same term of said court, the following further proceedings were had, to wit:

Motion to annul and set aside supersedeas.

This day came the parties, by their attorneys, and the matters of law arising upon plaintiffs' motion to set aside the supersedeas issued in this cause, being argued by counsel, it is considered by the court, that said supersedeas be set aside and annulled.

I, David Files, clerk of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, do hereby certify, that the above and beforegoing nine pages contain a true, full, and perfect exemplification of the record of proceedings in a certain suit lately pending and determined before said court, wherein William Brown, James Brown, Stewart Brown, Sam'l Nicholson, and Wm. E. Brown, were plaintiffs, and Wm. J. Ledyard, Wm. P. Hatter, and L. N. Hitchcock, were defendants.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said circuit court, this thir-
[SEAL.] teenth day of April, in the year of our Lord one thousand eight hundred and forty-three.

DAVID FILES,
Clerk C. C. S. D. Alabama.

Southern district of Alabama.

U. S. of America, the State of Alabama.

The President of the United States to the marshal of said district, greeting.

You are hereby commanded to summon Wm. Brown, James S. Brown, Samuel Nicholson, and Wm. E. Brown, partners by the name of Brown, Brothers & Co., or their attorneys, Gibbons & Fisher, to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of January next, then and there to hear errors assigned on a certain writ of error directed to the circuit court of the U. S. for the southern district of Alabama, in which the said Brown, Brothers & Co. are plaintiffs, and Wm. J. Ledyard, Wm. P. Hatter, L. N. Hitchcock and partners, by the name of Ledyard, Hatter & Co., are defendants. Hereof fail not, and have you before the said Supreme Court this writ, with your endorsement.

Witness hon. Wm. Crawford, one of the judges of the circuit court of the U. S. for the southern district of said State, this 28 March, 1843.

WM. CRAWFORD.

Received 7 April, 1843, and executed same day on Gibbons & Fisher, by handing them a copy.

WM. ARMISTEAD, *U. S. marshal*,
By C. CUYLER, *D. marshal.*

Service and ret. $5 00.

UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

Because, in the record and proceedings, as also in the rendition of judgment in a plea which is in the said circuit court before you, wherein Wm. J. Ledyard, Wm. P. Hatter, L. N. Hitchcock, and
are defendants, and Wm. Brown, James Brown, Stewart Brown, Sam'l. Nicholson and William E. Brown are plaintiffs, a manifest error hath happened, to the *the* great damage of the said defendants, as by their complaint appears, and it being fit, if error there be, the same should be corrected and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same at Washington on the second Monday of January next, in the Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein to correct the error, what of right, according to law and the custom of the United States, should be done.

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Witness the hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-three.

[L. S.]

Issued the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and forty-three.

Attest:

DAVID FILES,
Clerk C. C. So. D. Alabama.

BROWN, BROTHERS, & Co.
vs.
LEDYARD, HATTER & Co.
} In error.

In the circuit court of the United States, fifth circuit and southern district of Alabama.

Know all men by these presents, that we, William J. Ledyard, Thaddeus Sanford, James Sanford and S. F. Wilson, are held and firmly bound unto Wm. Brown, James Brown, Stewart Brown, Sam'l Nicholson and Wm. E. Brown in the penal sum of six thousand two hundred and fifty-two $\frac{50}{100}$ dollars, lawful money, to be paid to the said William, James, Samuel and William E., their executors and administrators, and for which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this 29th day of March, in the year of our Lord one thousand eight hundred and forty-three.

Whereas, the above named Wm. J. Ledyard, Wm. P. Hatter, L. N. Hitchcock, and have prosecuted their writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, for the sum of three thousand one hundred and twenty-six $\frac{25}{100}$ dollars. Now the condition of this obligation is such, that if the above named Wm. J. Ledyard, Wm. P. Hatter, L. N. Hitchcock and shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void, else to remain in full force and virtue.

WM. J. LEDYARD, [SEAL.]
THADDEUS SANFORD, [SEAL.]
JAMES SANFORD, [SEAL.]
S. F. WILSON, [SEAL.]

I, David Files, clerk of the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, do hereby certify the above to be a true copy of the original bond on file in my office.

Witness my hand and the seal of the said circuit court, this tenth day of April, in the year of our Lord one thousand eight hundred and forty-three.

[SEAL.]

DAVID FILES,
Clerk C. C. So. D. Alabama.

Filed 13th January, 1844.